

Filed for intro on 02/19/2003
SENATE BILL 810 By
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HOUSE BILL 1222
By Turner M

AN ACT to amend Tennessee Code Annotated, Title 43 and Title 62, relative to the use of pesticides in Tennessee.

WHEREAS, the state of Tennessee is blessed with a bounty of natural resources; and

WHEREAS, farming is a noble and vital profession within the state of Tennessee; and

WHEREAS, an important part of modern farming is the use of pesticides; and

WHEREAS, in recognition of the potential threat to human life and health that any misapplication of pesticides may precipitate; and

WHEREAS, the general assembly is equally concerned with protecting the livelihood of farming, the health of farmers and the health of members of the rural general public; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and cited as the "Tennessee Commercial Aerial and Ground Spraying Protection Act of 2003".

SECTION 2. Tennessee Code Annotated, Section 43-8-301, is amended by designating the existing language as subsection (a) and by adding the following language to be designated as subsection (b):

(b) It is the intent of the general assembly by enacting this act to ensure that farming with insecticides, fungicides and rodenticides is done in a safe manner without unnecessary threat to human life and health. This act should be interpreted to further that end.

SECTION 3. Tennessee Code Annotated, Section 43-8-304, is amended by inserting the following new subsections immediately after subsection (c):

(d) Any person applying for a license as a commercial aerial applicator shall have first obtained a certification, as provided in the Tennessee Application of Pesticides Act of 1978, compiled in title 62, chapter 21, in the category of pesticides which they intend to apply or provide sufficient evidence of an equivalent certification from a state with which this state has a current and official reciprocal agreement.

(e) Any person applying for a license as a commercial aerial applicator shall take an examination administered by the department as directed by the commissioner in order to determine if the applicant has the knowledge and technical qualifications necessary for the issuance of such license.

(f) Aerial applicators shall maintain a log record for a period of thirty-six (36) months on each application. Such record shall be made available on demand to the commissioner for the commissioner's review and copies shall be provided to representatives of the department upon request. Aerial applicators located outside the boundary of the state, shall submit a certified copy of any log record for any or all applications as required by the commissioner within forty-eight (48) hours at a time and location designated by the commissioner.

(g) The log record shall clearly set out the following information relative to each and every pesticide application:

- (1) The pesticide used and its EPA registration number;
- (2) The crop or plant to which the pesticide was applied;

- (3) The dosage rate of the application;
- (4) The approximate acreage to which the pesticide was applied;
- (5) The location, description and GPS coordinates of the area to which the pesticide is applied;
- (6) The landowner, producer or other person employing such aerial applicator's services;
- (7) The date of pesticide application;
- (8) The name and Tennessee license number of the aerial applicator;
- and
- (9) The decal number of the aircraft used for the application.

(h) All pesticides applied by aerial applicators shall be applied in a manner that is consistent with its labeling. Each aerial applicator must submit evidence to prove that label directions were followed and all restrictions were fully met when requested to do so by the commissioner.

(i) Aerial applicators holding a license under existing Tennessee law may renew such license without examination, but such renewed license shall be subject to whatever restrictions or limitations as are indicated by the license pursuant to the provisions of § 43-8-302(9).

(j) A Tennessee-issued aerial applicator license with photo identification shall be in the possession of the aerial applicator while engaged in the aerial application of pesticides in this state.

(k) Aerial applicators in the state shall notify the sheriff's office in the county in which a pesticide application is to be made. Such notification shall be made prior to the pesticide application and no later than the day of the application. The aerial applicator shall report the name of the landowner and the location of each intended pesticide application as well as the name or names of the pesticide or pesticides to be sprayed.

(l) All aircraft licensed under this chapter shall be secured or otherwise rendered inoperable by means of a prop chain lock, gust lock, throttle restriction or other measures acceptable to the commissioner except when the aircraft is in use or under the direct control of an aerial applicator licensed under this chapter or under the direct responsibility of an airport operator.

(m) The commissioner may deny licensing to applicants not meeting the requirements for certification or licensing or, for violations of the rules or statutes concerning the use, purchase or sale of pesticides; provided, however, any person denied such certification or licensure may contest such decision by requesting a hearing as a contested case under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 4. Tennessee Code Annotated, Section 43-8-306, is amended by redesignating the present section as (a) and inserting the following new subsections to be designated as follows:

(b) It shall be unlawful for any commercial agricultural ground or aerial pesticide applicator to apply pesticides within one hundred feet (100') (no deposit zone) of any place where there is substantial routine human activity, including, but not limited to, residences, schools and similar structures.

(c) It shall be unlawful for any commercial aerial applicator to apply pesticides in a one thousand two hundred foot (1,200') buffer zone beyond the no deposit zone. Only ground application shall be lawful within one thousand two hundred feet (1,200') of the no deposit zone. Such locations include, but are not limited to, residences, schools and similar structures. It shall be unlawful for any commercial aerial applicator to apply pesticide within twenty-five feet (25') of a right-of-way of a public road.

SECTION 5. Tennessee Code Annotated, Title 43, Chapter 8, Part 3, is amended by adding the following as new, appropriately designated sections:

43-8-310.

The department shall maintain a current registry of pesticide-sensitive persons and all certified organic farms. Upon request, the department shall register any person who pays annually a twenty-five dollar (\$25.00) registration fee and submits certification from a physician stating the persons' sensitivity, organic farm certification or beekeeper status. The department shall notify all licensees quarterly, or more often if necessary, of the name, address and telephone number of those persons registered as beekeepers, organic farmers and pesticide sensitive with the department.

43-8-311.

(a) Commercial aerial applicators shall notify, in the area where agricultural aerial application of pesticides is to be done, and as far in advance as possible all beekeepers, organic farms and those individuals in the registry of pesticide-sensitive persons. The materials having the least toxic qualities to honeybees shall be used whenever possible.

(b) The department shall make public via public service announcements on local broadcast or print media a toll-free hotline for persons to report improper chemical application and to determine the local aerial spraying schedule. Such public notification of the hotline shall be made at least twice monthly over the course of the local spraying season.

(c) Notification, as required in subsection (a), may be made by telephone, by mail, in person or by hand delivery. Notification must also include information on the type of pesticide to be used.

43-8-312.

Notice of any commercial aerial application of pesticides must be posted by the person or party contracting aerial application on a seasonal basis. Such notice is required at least twenty-four (24) hours prior to the first application of pesticides until the

reentry period established by federal or state law for pesticides has lapsed for the last pesticides used. Alternatively, notice may be placed on an application-specific basis from the date of the application. Each sign shall be at least eight and one-half inches (8.5") by eleven inches (11") and shall state in English (and if there is a significant non-English speaking workforce population, the signs should also be in that language as well): "WARNING – AREA TREATED BY AIRCRAFT WITH PESTICIDES – DO NOT ENTER". The postings shall be placed at normal points of access and at one-quarter (1/4) mile intervals along those borders of an outdoor application site that lie within five hundred feet (500') of any place where there is substantial routine human activity, including, but not limited to, residences, schools and similar structures, except for public roads.

43-8-313.

(a) The following persons shall maintain records of pesticide use:

- (1) Any person who uses a pesticide for an agricultural use;
- (2) Any person who uses a pesticide registered pursuant to 43-8-104;
- (3) Any person engaged for hire in the business of pest control;
- (4) Any person who uses a pesticide for industrial post-harvest commodity treatment; and
- (5) Any person who uses a pesticide registered pursuant to 43-8-104 for any outdoor institution or outdoor industrial use.

(b) The records shall include the following information for each pest control operation:

- (1) Date of application;
- (2) Name of the operator of the property treated;
- (3) Location of property treated;
- (4) Crop commodity or site treated;

(5) Total acreage or units treated at the site; and

(6) Pesticide, including the United States environmental protection agency or state registration number which is on the pesticide label, and amount used.

(c) In addition to the information required in subsection (b), the operator of the property which is producing an agricultural commodity, and an agricultural pest control business applying pesticides to such property, shall include in the records the following information for each pest control operation:

(1) Location of the property treated, by county, section, township, range, base and meridian;

(2) Hour the treatment was completed;

(3) The operator identification number issued to the operator of the property treated;

(4) The site identification number issued to the operator of the property treated;

(5) Total acreage (planted) or units at the site; and

(6) Name or identity of the person who made and supervised the application, if the pesticide application was made by an agricultural pest control business.

(d) The operator of the property which is producing an agricultural commodity shall maintain records of pesticides applied by an agricultural pest control business to such property, by site.

(e) In addition to the information required in (b), persons engaged for hire in the business of pest control at a school site shall include in the records the following information for each pest control operation:

(1) Time application was completed;

(2) Name and address of the school site; and

(3) Application location at the school site. For purposes of this subsection, location includes, but is not limited to, classrooms, playgrounds, cafeteria, vehicles and athletic fields.

(f) The records required pursuant to this section shall be retained for two (2) years and made promptly available to the commissioner upon request.

43-8-314.

(a) Persons required to maintain pesticide use records pursuant to § 43-8-313 shall report a summary of the monthly use of pesticides to the department. The report shall be provided to the commissioner by the tenth day of the month following the month in which the work was performed. If the report is mailed, the postmark shall be the date of delivery.

(b) The report shall be in a format approved by the commissioner. The report shall include the following:

(1) The name and address of the person who or business or organization which applied the pesticide or pesticides;

(2) County where the pest control was performed;

(3) Month and year of pesticide use;

(4) Crop, commodity or site treated, except when using a designated use code, as specified on the monthly summary pesticide use report form;

(5) Pesticide, including environmental protection agency or state registration number which is on the pesticide label, and the amount used;

(6) Number of applications made with each pesticide and the total number of applications made during the month; and

(7) Total acres or units treated with each pesticide, except when using a designated use code, as specified on the monthly summary pesticide use report form.

SECTION 6. Tennessee Code Annotated, Title 62, Chapter 21, is amended by adding the following as a new, appropriately designated section:

62-21-131.

Commercial pest control operators shall notify as far in advance as possible all beekeepers, organic farms and those individuals on the registry of pesticide-sensitive people in the area where ground application of pesticides is to be done. The materials having the least toxic qualities to honeybees shall be used whenever possible.

SECTION 7. This act shall take effect July 1, 2003, the public welfare requiring it.